## NOTIFICATION REGARDING CLAIMS ALLOCATION

## Elimination of Claims Allocation on 1/1/06

This notification is in regard to the practice of claims allocation of workers' compensation claim for occupational pneumoconiosis (OP), occupational disease hearing loss (ODHL) and other occupational diseases (OD), including carpal tunnel syndrome. The relevant provisions of Chapter 23 of the West Virginia Code provide that claims allocation is a discretionary practice. Therefore, beginning on January 1, 2006, the West Virginia Insurance Commissioner, which on that date assumes the regulatory duties formerly belonging to the Workers' Compensation Commission, will no longer be allocating any workers' compensation claims, including, but not limited to, OP, OHL and OD claims.

This decision was made based on a careful analysis of the practice of claims allocation, and the conclusion from that analysis that the benefit of allocating claims would be outweighed by the problems which would be created by attempting to allocate claims in West Virginia's privatized workers' compensation market. It was further based on the fact that the practice of claims allocation does not exist in most other states, and therefore continuing claims allocation in West Virginia could be counter-productive to encouraging competitive market when the market opens in 2008. Finally, there was significant input received from stakeholders during this process. Although the input received was varied, the general consensus of the stakeholders was that, despite the short-term problems which might occur, if the immediate elimination of claims allocation in West Virginia is in the best interests of the long-term success of West Virginia's workers' compensation insurance market, then they would not oppose such action.

## What will occur on 1/1/06

This policy decision not to allocate claims means that the Insurance Commission will not issue any allocation orders. Requests for allocation in all OP, ODHL, and OD claims that have previously been submitted to the Workers' Compensation Commission, but not been

ruled on, will be returned to the employer, or its carrier, and the employer or carrier will then rule on the claim based on the requirements of Chapter 23 and the Workers' Compensation Rules. This means that from the date the employer receives this notification, it must issue a ruling on the claim within the statutorily prescribed time frame in Chapter 23 and/or the Workers' Compensation Rules.

If the Workers' Compensation Commission has already issued an allocation order prior to 1/1/06, the Insurance Commissioner will recognize the order, and the order will be enforceable. The Insurance Commissioner will review all allocation orders which the Workers' Compensation Commission was administering on behalf of self insured employers as of 12/31/05, and will designate a "responsible administrator" for each such allocated claim. The responsible administrator will be the employer with the largest share of allocated liability, or its carrier when the employer is not self-insured.

If the employer with the largest share of liability was an insured employer through the Workers' Compensation Fund during the relevant period of exposure, the responsible administrator will be the Insurance Commissioner's third-party administrator (TPA) for the Workers' Compensation Old Fund, which will be Brick Street Insurance until at least July 1, 2006. Therefore, the claims files for such claims will be transferred from the former Workers' Compensation Commission to Brick Street's TPA division for continued administration.

If the employer with the largest share of liability was a self-insured employer during the relevant period of exposure, the responsible administrator will be the self-insured employer or its TPA. Therefore, the claims files for such claims will be transferred from the former Workers' Compensation Commission to the self-insured employer or its TPA for continued administration. The self-insured employer or its TPA will receive written notice regarding it being the designated responsible administrator for the allocated claim.

The responsible administrator will continue to administer claims pursuant to the provisions of Chapter 23 and the Workers' Compensation rules; however, it will only make payments to

providers and claimants commensurate with its percentage of responsibility. It will then need to send notices to the other responsible parties named in the allocation order to make payments commensurate with their percentage(s) of responsibility within ten (10) days. (These notices will be similar, and have the same general effect, as "pay orders" previously issued by the Workers' Compensation Commission in regard to allocated claims).

On a going forward basis, any claim that would previously have been considered for allocation will be treated by carriers or self-insured employers as any other workers' compensation claim, and should be ruled on, and subsequently administered (if the claim is granted), pursuant to the provisions of Chapter 23 and the Workers' Compensation Rules.

## **Questions and Concerns**

If there are any questions or concerns regarding this notice, please direct all telephone calls to Barbara Spradling with the Claims Services Division of the Insurance Commissioner, at (304) 558-1966 ext. 3130 or 558-5838.